

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0642, State of New Hampshire v. Gerald M. Gilday, the court on May 24, 2005, issued the following order:

The defendant, Gerald M. Gilday, appeals orders of the superior court related to restitution. We affirm.

The defendant pled guilty to several charges, including aggravated driving while intoxicated, *see* RSA 265:82-a, I(b) (2004). At his sentencing hearing in January 2003, the State sought restitution in the amount of \$336,083.06. At the conclusion of the hearing, the trial court imposed a prison sentence of three to six years. With respect to restitution, the court stated:

Under restitution we'll see where this falls. Time will tell and maybe it's a meaningful, maybe it's a meaningless. I think it's too early to tell what you're going to be able to do over time but I'm ordering the restitution so it's out there: \$336,083.06 plus the mandatory 17 percent statutory fee to be paid through the Department of Corrections. The State and/or the defendant may request a hearing to further consider restitution and all aspects once you have been placed on parole, which means released from custody. And by then a lot more information will be available and your ability to deal with this will be better known obviously than it is now.

The court issued a written sentencing order that stated in pertinent part: "The defendant is ordered to make restitution of \$336,083.06 plus statutory 17% administrative fee through the Dept. of Corrections as directed by the Probation/Parole Officer. The state and/or defendant may request a hearing to further consider restitution once the defendant has been placed on parole." Although no timely appeal was filed from this sentencing order, the amount of restitution is not final.

In 2004, the defendant filed a motion requesting a hearing to address restitution. The defendant alleged that the victim had filed an action in Massachusetts seeking to have the restitution decree registered as a foreign decree. The defendant conceded that he was not yet on parole, but requested an order from the trial court clarifying that the original restitution order was not final. The trial court stated that it would not review the matter because it was premature. It issued a written order dated August 17, 2004, that concluded: "[The defendant] remains obligated to pay restitution in the amount of

\$336,083.06. As stated in the sentencing order, the Court is willing to further address the issue of restitution, in terms of payment at least, once [the defendant] is on parole."

On appeal, the defendant challenges the trial court's denial of his request for a hearing on restitution. The original sentence plainly provided that the defendant could request such a hearing once he had been placed on parole. The defendant had not been placed on parole at the time he requested the hearing – thus, the trial court properly concluded that the request was premature.

The defendant mistakenly construes the trial court's August 17, 2004 order as limiting the scope of any future hearing to issues related to payment. At the sentencing hearing, the trial court specifically stated that the defendant would be able to request a hearing to "further consider restitution and all aspects" once he had been placed on parole. (Emphasis added.) In context, it is clear that the scope of any such hearing will encompass the amount of restitution, which the defendant may contest. While the August 17, 2004 order indicates that any further hearing would address at a minimum (i.e., "at least") the terms of payment, we do not construe the August 17 order as limiting the scope of the hearing contemplated by the original sentencing order.

Affirmed.

NADEAU, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,
Clerk**